

## Internal Revenue Service

Number: **201441009**

Release Date: 10/10/2014

Index Number: 355.00-00, 355.01-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:2

PLR-137275-13

Date:

March 10, 2014

### Legend

Foreign Parent =

FSub1 =

FSub2 =

FSub3 =

FSub4 =

FSub5 =

FSub6 =

FSub7 =

FSub8 =

Distributing =

Controlled =

Sub1 =

a =

Unrelated Person =

FJV =

PLR-137275-13

3

JV Agreement =

Business A =

FSub3's Business =

Business B =

Dear :

This letter responds to your authorized representative's letter dated August 23, 2013, requesting rulings regarding certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding whether the Distribution (defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

### **Summary of Facts**

Foreign Parent owns all of the issued and outstanding stock of FSub1 and FSub2. FSub1 owns all of the issued and outstanding stock of FSub3, FSub4 and Distributing, the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the "US Parent Group"). FSub2 directly or indirectly owns all of the issued and outstanding stock of FSub6, FSub7, and FSub8. FSub4 indirectly owns all of the outstanding stock of FSub5. Distributing owns all of the single class of issued and outstanding stock of Controlled and all of the issued and outstanding stock of Sub1.

Distributing is indirectly engaged in Business A through Sub1. Controlled is directly engaged in Business B. The financial information submitted by Distributing and Controlled indicates that Business A and Business B each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The Distribution (defined below) is motivated, in whole or substantial part, by the following corporate business purposes: (i) to facilitate the separation of Business B from Business A, and the combination of Business B with other segments of the same general business, including FSub3's Business; so that (ii) Business B can participate in

the JV Agreement which will allow for continued innovation by Business B; and (iii) FSub3 can participate in the JV Agreement which will allow for geographic expansion of FSub3's Business into an additional market (collectively, the "Corporate Business Purposes").

### **Proposed Transaction**

For what are represented to be valid business reasons, Distributing proposes to undertake the following transactions pursuant to a single plan which have been partially consummated (together, the "Proposed Transaction"):

- (i) Distributing will distribute all of the stock of Controlled pro rata to FSub1 (the "Distribution").
- (ii) FSub1 will transfer all of the stock of Controlled to FSub3 (the "Contribution").

In addition, Foreign Parent and/or certain of its direct or indirect wholly owned subsidiaries, have entered into the JV Agreement with Unrelated Person. Under the JV Agreement, FSub5, FSub6, FSub7, and FSub8 transferred cash to FJV in exchange for an a percent interest in FJV. Unrelated Person owns the remaining interest in FJV. Neither Distributing nor Controlled has transferred or will transfer, directly or indirectly, any of its respective assets to FJV or any of its directly or indirectly controlled entities. However, Controlled will provide Business B services to FSub3, which will in turn provide services to FJV, in each case for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

### **Representations**

- (a) No part of the stock that will be distributed by Distributing in the Distribution will be received by FSub1 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (b) The five years of financial information submitted on behalf of Business A conducted by Sub1, a member of the Distributing separate affiliated group as defined in § 355(b)(3)(B) (the "Distributing SAG"), is representative of the present operations of Business A, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (c) The five years of financial information submitted on behalf of Business B conducted by Controlled is representative of the present operations of

Business B, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

- (d) Neither Business A conducted by the Distributing SAG nor control of an entity conducting that business will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with the expansion of Business A.
- (e) Neither Business B conducted by Controlled nor control of an entity conducting that business will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with the expansion of Business B.
- (f) Following the Distribution, the Distributing SAG will continue the active conduct of Business A, independently and with its separate employees.
- (g) Following the Distribution, Controlled will continue the active conduct of Business B, independently and with its separate employees.
- (h) The Distribution will be carried out for the Corporate Business Purposes. The Distribution is motivated, in whole or substantial part, by the Corporate Business Purposes.
- (i) The Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing (or its subsidiaries) or Controlled (or its subsidiaries) or both.
- (j) No intercorporate debt will exist between Distributing (and its subsidiaries) and Controlled (and its subsidiaries) at the time of, or subsequent to, the Distribution.
- (k) There is no intercorporate indebtedness existing between Distributing and Controlled that was issued, acquired, or will be settled at a discount.
- (l) Payments made in connection with all continuing transactions, if any, between Distributing (and its subsidiaries) and Controlled (and its subsidiaries) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (m) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and -14

as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597). At the time of the Distribution, Distributing will not have an excess loss account in the stock of Controlled or the stock of any Controlled subsidiary.

- (n) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (o) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock that was either (a) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (b) attributable to distributions on Distributing's stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (p) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons (other than persons described in § 355(e)(2)(C)) will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (q) Immediately after the Distribution (taking into account § 355(g)(4)), neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (r) The distribution of Controlled stock to FSub1 in the Distribution is with respect to FSub1's ownership of Distributing stock.
- (s) Neither Distributing nor Controlled (i) was or will be a United States real property holding corporation (as defined in § 897(c)(2)) at any time during the five-year period ending on the date of the Distribution, or (ii) will be a United States real property holding corporation immediately after the Distribution.

- (t) Under the JV Agreement, Unrelated Person's interest in FJV does not create, directly or indirectly, an equity interest in Controlled for Federal tax purposes.
- (u) The Contribution will qualify as an exchange under § 351.

### **Rulings**

Based solely on the information submitted and the representations set forth above, and provided that (i) the distribution of Controlled stock to FSub1 in the Distribution is with respect to FSub1's ownership of Distributing stock, and (ii) any other transfer of stock, money, or property between Distributing, Controlled, or any Distributing shareholder and any person related to Distributing, Controlled, or any Distributing shareholder is respected as a separate transaction, we rule as follows on the Distribution:

- (1) No gain or loss will be recognized by Distributing on its distribution of the stock of Controlled in the Distribution (§ 355(c)).
- (2) No gain or loss will be recognized by (and no amount will be included in the income of) FSub1 upon its receipt of the stock of Controlled in the Distribution (§ 355(a)(1)).
- (3) The basis of the stock of Distributing and Controlled in the hands of FSub1 immediately after the Distribution will be the same as the basis of the Distributing stock held by FSub1 immediately before the Distribution, allocated in proportion to the fair market value of Distributing and Controlled in accordance with § 358(a)(1) and Treas. Reg. § 1.358-2(a)(2) (§ 358(b)(2) and (c)).
- (4) FSub1's holding period in the Controlled stock received in the Distribution will include the holding period of the Distributing stock with respect to which the Distribution is made, provided that such Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).
- (5) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with § 312(h) and Treas. Reg. §§ 1.312-10 and 1.1502-33(e)(3).

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transactions under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects



resulting from, the Proposed Transactions that is not specifically covered by the above rulings. In particular, except as so provided, no opinion is expressed or implied regarding:

- (i) Whether the Distribution satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether the Distribution is being used principally as a device for the distribution of earnings and profits of Distributing, Controlled, or both (see § 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or
- (iii) Whether the Distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing or Controlled (see § 355(e) and Treas. Reg. § 1.355-7).

### **Procedural Statements**

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the powers of attorney on file in this office, a copy of this ruling letter will be sent to the representative named therein.

Sincerely,

Joanne M. Fay  
Chief, Branch 2  
Office of Associate Chief Counsel (Corporate)